SUPREME COURT, U. S.
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No. 73-1807

In the
Supreme Court of the United States
October Term, 1973

STANLEY A. PAPIERZ, et al.
Petitioners,

vs.

ROBERT K. RAUTH,
Respondent.

On Petition for Writ of Certiorari to the
Appellate Court of Illinois, First Judicial District

REPLY TO RESPONDENT'S BRIEF

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The deprivation of due process in the appointment of the receiver is demonstrated by contrasting that procedure with the one followed in adjudicating the main issue in the case. A formal pleading was filed alleging a joint venture; a formal answer was filed denying its existence; and a trial followed with full opportunity on both sides to be heard as to the disputed issues of fact and the propriety of the relief requested by Rauth.

While the Court's determination of whether the parties were joint venturers was conducted in accordance with

established principles of due process, it is clear that the question of the receiver's appointment was not. Although the Papierzes were afforded the right to notice, pleadings and a hearing on the question of whether a joint venture existed, they were deprived of those rights on the question of the receiver's appointment.

Respondents do not dispute the fact that prior to the time the parties were decreed to be joint venturers the question of the appointment of a receiver was never before the court. We do not deny that once Rauth was found to have a property interest in the complex he had the right to seek protection through an application for the appointment of a receiver. However, it is equally clear that the Papierzes had the right to defend such an application in an orderly proceeding. The appointment of a receiver divested the Papierzes of a significant interest in property: the right to operate and maintain an enterprise to which they had devoted ten years of their lives.

Rauth never made an application for the appointment of a receiver. It was unnecessary because his interest was not in any danger whatsoever. In proceedings before the Court, Rauth's own attorney expressly stated that Rauth had never made an application for the appointment of a receiver. He admitted in open court that:

> "The decree was prepared by the Court. There was no motion for any receiver that Roth (sic) has filed. (Petition for Certiorari Appendix E p. 38a)

No where in their brief do Respondents challenge the correctness of that statement or its applicability to the issues presented in the instant petition.

Respondents in support of their contention that notice was given direct the Court's attention to a portion of the opinion of the Appellate Court in which it is stated:

> "The counterclaimant [Respondent] asked for a receiver after this Court decided the equities in his favor in 1970. The counterdefendants [Petitioners] had notice of this request for a receiver and were given an opportunity to present written and oral arguments opposing the appointment of a receiver before the now-disputed decree was issued in 1973, as evidenced by the record of proceedings before the chancellor upon remandment."
> (Respondents' Brief p. 4)

That the Appellate Court could decide this case after making such a fundamental error points clearly to the need for this Court to grant the pending petition. As stated in our original petition the only mention Rauth ever made concerning the appointment of a receiver was in a proposed decree presented to the Chancellor over eighteen months prior to appointment of the receiver. After Rauth presented this decree the Chancellor expressly stated that no receiver would be appointed. (R. 63) No further mention of a receiver was ever made.

The generalized reference in the opinion of the Appellate Court to Rauth's request, which allegedly gave Papierz the opportunity to defend the application, finds no support anywhere within the record of these proceedings. Respondents quote from the Appellate Court opinion, but do not furnish any record reference to support the Court's statement. There is none. During the time that elapsed from the rejection of the decree tendered by Respondents and the entry of the decree drafted by the trial court, Petitioners were never aware that the Court was even mentally entertaining the possibility of appointing a receiver. It is absurd to argue that there was notice of Rauth's request for a receiver when no such request was ever made. (The record of all proceedings after the

initial Appellate Court opinion determining that the parties were joint venturers has been filed with this Court.)

The remaining language of the Appellate Court to which the Respondents refer in support of the appointment is similarly unsupported by the record. There is no substantiation for the Appellate Court's assertion that the Papierzes were guilty of bad faith or misconduct.

Again, a generalized statement of fact is made by the Appellate Court and the Respondent without reference to the record. The omission of any specific record references is due to the fact that no record reference exists supporting the criticism of Petitioner's conduct. The conduct of the Petitioners after remandment was never brought before the Court. No evidence of any misconduct of the Petitioners was ever offered after the Appellate Court decreed that the parties were joint venturers. Petitioners can only surmise that they are being punished for their prior assertions that no joint venture ever existed and for their vigorous legal arguments which they raised relating to the scope of the initial mandate of the Appellate Court. Nowhere in the Respondent's brief or the opinion of the Appellate Court is there any reference to the record indicating or even inferentially suggesting that the Petitioners have been guilty of any bad faith or misconduct after the first opinion of the Appellate Court.

In the instant case the Petitioners were deprived of a significant interest in property without notice and without a hearing in violation of established principles of due process of law. Merely because a litigant has been given an evidentiary hearing in one aspect of a case does not mean that he may be deprived of his property in other

aspects of a case without adherence to the legal requirements which our legal system holds as inviolate.

Respectfully submitted,

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